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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 17th December 2012

No. 10425—li/1(B)-75/2005-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd August 2012 in Industrial Dispute Case No. 43 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of Divisional Manager, Odisha Cashew Development Corporation, Khurda and its workman Shri Naina Gouda, ex Watchman was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 43 OF 2005

Dated the 22nd August 2012

Present :

Shri S.A.K.Z. Ahamed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of Divisional Manager, Odisha State Cashew Development Corporation, Khurda. . . First party—Management

And

Shri Naina Gouda, . . . Second party—Workman
ex Watchman

Appearances :

Shri B. C. Sahoo . . . For the First party—Management

Shri Naina Gouda . . . For the Second party—Workman himself

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Court for adjudication vide Order No. 8201—li/1(B)-75/2005-LE., dated the 26th September 2005.

“Whether the termination of services of Shri Naina Gouda, Watcher by the Divisional Manager, Odisha State Cashew Development Corporation, Khurda with effect from the 20th October 2001 is legal and/or justified ? If not, to what relief is the workman Shri Gouda entitled ?”

2. The case of the workman in brief, as set out in his statement of claim is that initially he has been working to watch the cashew plantation of Landei Hill and Gochhabadi cashew fields under Jagannath Prasad Range since the year 1978 while the cashew plants were managed and controlled by the Soil Conservation Department. He was getting his wages at par with the minimum wages declared by the Government from time to time under the Minimum Wages Act. According to the workman, both the Soil Conservation and the present management are governed by the same Department. The cashew plants of Gochhabadi field was transferred to the present management in the year 1993 but the service conditions of the workman remained unchanged and the present workman along with other workers continued to work as before under the management without any interruption. The workman has further averred that the retrenchment order vide letter No. 1248, dated the 20th October 2001 was communicated to him on the 6th December 2001 while he was continuing his job in Gochhabadi cashew field. So according to the workman, the retrenchment is bad having been given effect retrospectively. Further according to the workman, no retrenchment compensation and notice pay as required under the Industrial Disputes Act, 1947 was not paid. An amount of Rs. 4750 was paid in February, 2002 was adjusted towards his duty wages. The workman has stated that he was retrenched from service whereas his juniors namely, Adarsa Naik, Dukha Naik, Eswar Behera and Ghanasyama Sahoo joined in 2004, 1997, 1996 and 2000 respectively in similar category are retained in service and are also continuing. On these averments, the workman has prayed to answer the reference in favour of the workman and against the management directing reinstatement in service with full back wages.

3. On the other hand, the management appeared and filed written statement admitting that the workman was engaged temporarily as a casual labourer on daily wage basis with effect from the 5th November 1993. Due to financial constraints faced by the management, the workman was disengaged from service after observing due procedure of law. An amount of Rs. 4,660 was paid to the workman towards notice pay and retrenchment compensation as required under Section 25-F of the Industrial Disputes Act, 1947 vide letter No. 125, dated the 15th January 2002. Hence the disengagement of the workman was legal. The job of the workman under the management was never a regular and continuous service. The workman was engaged by the management as a

casual labourer to work on daily wage basis for different days in different years as and when required after taking work load into consideration. The engagement of the workman was neither regular nor throughout the year. According to the management, while disengaging the workman from service, it has followed the principle of "Last come First go" as provided under Section 25-G of the Industrial Disputes Act, 1947. As the workman was a single casual labourer engaged specifically to work in Gochhabadi cashew plantation with effect from the 5th November 1993. The other casual labourers as named by the workman in his statement of claim were not working in the said Gochhabadi Cashew Plantation along with the workman but in different Cashew Plantation. So in view of the above submission, the management has prayed that the workman is not at all entitled to get any relief as prayed for.

4. On the basis of the above pleadings of both the parties, the following issues are settled.

ISSUES

- (i) "Whether the termination of services of Shri Naina Gouda, Watcher by the Divisional Manager, Orissa State Cashew Development Corporation, Khurda with effect from the 20th November 2001 is legal and/or justified ?
- (ii) If not, to what relief is the workman Shri Gouda entitled ?"

5. In order to substantiate his plea, the workman has examined himself as W.W. 1 whereas the management has examined its Divisional Manager as M.W. 1 and proved the copy of Letter No. 125, dated the 15th January 2002 and the copy of calculation sheet under the cover of Ext. A and B respectively.

FINDINGS

6. *Issue Nos. (i) and (ii) :*—Both the issues are taken up together for the sake of convenience.

Before going to discuss the evidence of both the parties, it is pertinent to mention here that there is no dispute between the parties regarding the engagement and disengagement of the workman. During argument, the management urged that the workman was working as a casual labourer as and when required and had not worked continuously. Further the management urged that due to financial constraint, the workman was disengaged and due compensation as required under Section 25-F of the Industrial Disputes Act, 1947 was paid to the workman. No juniors to the workman is working under the management, so the provisions of Section 25-G of the Industrial Disputes Act, 1947 has not violated. On the other hand, the workman urged that he was working continuously under the management and at the time of termination, the management has not followed the provisions of Section 25-F of the Industrial Disputes Act, 1947 and also junior to him are still continuing under the management.

7. To substantiate the above pleas, the management has not proved any document. In the authority reported in AIR 2010 S.C. 1236, Director, Fisheries Terminal Divisions *Vrs.* Bhikubhai Meghajibhai Chavda, it is observed that :—

"The appellants claim that the respondent did not work for 240 days. The respondent was a workman hired on a daily wage basis. So it is obvious, as this Court pointed out in the above case that he would have difficulty in having access to all the official records, muster rolls etc. in connection with his service. He has come forward and deposed, so in our opinion, the burden of proof shifts to the employer/ appellant to prove that he did not complete 240 days of service in the requisite period to constitute continuous service."

Applying the principles laid down in the above case by this Court, in the case at hand, the management has not filed a single piece of paper to show that the workman did not complete the requisite period of service to constitute continuous service. So the plea taken by the management that the workman had not worked continuously service as required under Section 25-B of the Industrial Disputes Act, 1947, cannot be believed.

8. The management has pleaded that due compensation as required under Section 25-F of the Industrial Disputes Act, 1947 was paid to the workman at the time of termination of his service. To substantiate the above plea, the management filed Letter No. 125, dated the 15th January 2002 under the cover of Ext. A. But Ext. A did not disclose the detailed calculation of the notice pay and retrenchment compensation. On the other hand, the workman urged that an amount of Rs. 4,760 was paid to him towards his arrear wages and not the retrenchment compensation and notice pay. Moreover, the workman was terminated on the 20th October 2001 whereas the alleged amount of Rs. 4,760 was paid to him on the 15th January 2002 which is near about three months after his termination. Law is well settled that non-compliance of retrenchment compensation, simultaneously with the termination would render it illegal. So in view of the above settled position of law, it is presumed that while terminating the services of the workman, the management has not followed the provisions of Sections 25-F (a) and (b) of the Industrial Disputes Act, 1947 which is a mandatory and precondition one.

9. The management has further urged that no junior to the workman has been retained in service. On the other hand, the workman has stated that at the time of his termination, the employees namely, Adarsa Naik, Dukha Naik, Eswara Behera and Ghansyama Sahoo who are juniors to him retained in employment and also now continuing. The management has clearly admitted in his written statement that the above named casual labourers are not working in the said Gochhabadi Cashew Plantation along with the workman but are working in different Cashew Plantation. So the above admission of the management clearly shows that the above named casual labourers are working under the Khurda Division of the management. So the management has also violated the principle of "Last come First go" as envisaged under Section 25-G of the Industrial Disputes Act, 1947.

10. So on careful consideration of all the materials available in the case record, as discussed above, and in view of the above settled position of law, I am of the considered view that the termination of service of the workman by the management with effect from the 20th October 2001 is neither legal nor justified. Therefore, the workman is entitled for reinstatement in service.

11. As regards back wages, it is an admitted fact that the workman had not worked under the management after his termination by way of disenagement. In view of the settled principle of law when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. So in the present case, on careful consideration of all the materials available in the case record, I am of the opinion that instead of granting full back wages, a lump sum amount of Rs. 20, 000 as compensation will meet the ends of justice. Hence both the issues are answered accordingly.

12. Hence Ordered :

That the termination of services of Shri Naina Gouda, Watcher by the Divisional Manager, Odisha State Cashew Developmt Corporation, Khurda with effect from the 20th October 2001 is illegal and unjustified. The workman Shri Gouda is entitled to be reinstated in service with a lump sum amount of Rs. 20,000 as compensation in lieu of back wages. The management is directed to implement this Award within a period of two months from the date of its publication failing the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S.A. K.Z. AHAMED

22-8-2012

Presiding Officer

Labour Court, Bhubaneswar

S.A. K.Z. AHAMED

22-8-2012

Presiding Officer

Labour Court, Bhubaneswar

By order of the Governor

J. DALANAYAK

Under-Secretary to Government